

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

<b>BILL #:</b>	HB 37 CS	Security of Consumer Report Information
<b>SPONSOR(S):</b>	Adams and others	
<b>TIED BILLS:</b>		<b>IDEN./SIM. BILLS:</b>

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>13 Y, 0 N, w/CS</u>	<u>Sheheane</u>	<u>Carlson</u>
2) <u>Agriculture Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Reese</u>	<u>Reese</u>
3) <u>Civil Justice Committee</u>			
4) <u>Commerce Council</u>			
5) _____			

## SUMMARY ANALYSIS

The bill defines the term “security freeze” and allows a consumer to place a “security freeze” on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency. The security freeze prohibits the consumer reporting agency from releasing the consumer’s report or any information contained within the report without the authorized consent of the consumer.

The security freeze lasts until the consumer requests that it be removed or temporarily lifted. The bill does not prohibit a consumer reporting agency from informing a third party that a particular consumer report has been placed under a security freeze.

The bill prohibits a consumer reporting agency from charging a fee to a consumer wishing to place a security freeze on his or her consumer report. The bill allows a consumer reporting agency to charge a fee, not to exceed \$10, when a consumer elects to temporarily lift or remove a security freeze on his or her consumer report.

The bill creates a new cause of action for any person who is aggrieved by a knowing or willful violation of the provisions of the bill for the recovery of actual and consequential damages, court costs, and attorney's fees.

The bill becomes effective on July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty** – The bill allows a consumer to protect his or her personal information by placing a security freeze on his or her consumer report and to remove or temporarily lift the security freeze at his or her discretion.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Fraud Alert**

The federal Fair Credit Reporting Act<sup>1</sup> (FCRA) provides two different types of fraud alerts that consumers may use to protect themselves against identity theft. Fraud alerts are designed to protect a consumer's private credit information if he or she suspects someone is attempting to open credit accounts in the consumer's name. When a business sees the alert on a consumer's credit report, the business must verify the consumer's identity before issuing credit. As part of the verification process, the business may try to contact the consumer directly.

A one-call fraud alert allows a consumer, or an individual acting on behalf of a consumer, who asserts in good faith that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, to request that a consumer reporting agency include a fraud alert on the file of that consumer and also provide that alert along with any credit score generated with that file for a period of 90 days unless the consumer requests that the alert be removed before the end of that time period. The consumer credit reporting agency must also refer the information regarding the fraud alert to each of the other consumer credit reporting agencies as described in current law.

An extended alert is provided for a consumer wishing to place an alert on his or her file for a period of up to seven years unless the consumer wishes to remove the alert before the end of that time period. During the first five years of an extended fraud alert, a consumer credit reporting agency must exclude the consumer from any list of consumers prepared by a consumer credit reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction not initiated by the consumer. A consumer may request that the exclusion be rescinded before the end of the five year time period. The consumer credit reporting agency must also refer the information regarding the extended fraud alert to each of the other consumer credit reporting agencies as described in current law.

The FCRA requires that in any case where a consumer credit reporting agency includes a fraud alert in the file of a consumer, the consumer credit reporting agency must disclose to the consumer that he or she may request two free copies of the file on the consumer during the 12 month period beginning on the date in which the fraud alert was included in the file.

Fraud alerts do not prevent a credit report from being issued.

##### **Blocking Information Resulting from Identity Theft**

The FCRA provides that a consumer credit reporting agency must block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, no later than 4 business days after the receipt by such agency of:

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<sup>1</sup> 15 U.S.C. ss. 1681 et seq.

Appropriate proof of the identity of the consumer; a copy of an identity theft report; the identification of such information by the consumer; and a statement by the consumer that the information is not related to any transaction by the consumer.

A consumer credit reporting agency is to promptly notify the furnisher of any information that has been identified as information resulting from an alleged identity theft that the information may be the result of identity theft; that an identity theft report has been filed; that a block has been requested; and the effective dates of the block.

A consumer credit reporting agency may decline to block or rescind any block if the consumer reporting agency reasonably determines that: the information was blocked in error; a block was requested by the consumer on the basis of material misrepresentation of fact by the consumer relevant to the request to block; or the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

## **Federal Legislation**

There are two bills currently filed in the United States Senate and three bills filed in the House of Representatives relating to the protection of consumer information.

**S. 737-** The bill amends the FCRA as it relates to consumer credit reporting agencies furnishing consumer information to the Federal Bureau of Investigation under specific circumstances.

Latest Major Action: 4/6/2005 Referred to Senate Committee on the Judiciary.

**S. 1461-** The bill provides a consumer with the ability to place a security freeze on his or her private information file if the request is made by certified mail, by telephone by providing certain sensitive personal information, or through a secure electronic mail connection if such a connection is made available by the consumer credit reporting agency.

The bill requires a consumer credit reporting agency to place the requested freeze no later than 2 business days after receiving the written or telephone request from the consumer and within 24 hours after receiving an electronic mail request. The bill requires the consumer credit reporting agency to send a written confirmation to the consumer within 2 business days of placing the requested freeze and to provide the consumer a unique personal identification number or password to be used by the consumer to authorize access to the private information file or to remove the freeze from the file.

The bill prohibits a consumer credit reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze from a consumer's credit report. The bill prohibits a consumer credit reporting agency from charging a fee to replace or reissue the identification number and password the first time the information is provided to the consumer and allows for a fee to be charged, of not more than \$10, for a second or subsequent replacement of such information.

Latest Major Action: 7/21/2005 Referred to Senate Committee on Banking, Housing, and Urban Affairs.

**H.R. 1745-** The bill provides for protection of a consumer's Social Security account number to prevent fraudulent misuse and to otherwise enhance protection against identity theft.

Latest Major Action: 5/19/2005 Referred to House Subcommittee on Financial Institutions and Consumer Credit.

**H.R. 2715-** Similar to H.R. 737, the bill amends the FCRA as it relates to consumer credit reporting agencies furnishing consumer information to the Federal Bureau of Investigation under specific circumstances.

Latest Major Action: 7/29/2005 Referred to House Subcommittee on Financial Institutions and Consumer Credit.

**H.R. 3140-** The bill amends the FCRA to expand the protections for sensitive personal information in Federal law to cover the information collection and sharing practices of unregulated information brokers, to enhance information security requirements for consumer reporting agencies and information brokers, and to require consumer reporting agencies, financial institutions, and other entities to notify consumers of data security breaches involving sensitive consumer information.

Latest Major Action: 6/30/2005 Referred to House Committee on Financial Services.

### **States Offering a Security Freeze**

Currently, California, Texas, Louisiana, Vermont, Washington, Nevada, Connecticut, Illinois, Maine, and Colorado offer consumers the right to freeze their credit reports. Texas, Vermont, Washington, and Illinois only offer the option to those consumers affected by identity theft. Florida does not provide for any freeze or block on consumer information.

This bill is drawn from language contained in California's and New Jersey's legislation.

### **Proposed Changes**

The bill allows a consumer to place a "security freeze" on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency. The security freeze prohibits the consumer reporting agency from releasing the consumer's report or any information contained within the report without the authorized consent of the consumer. The security freeze lasts until the consumer requests that it be removed. The bill does not prohibit a consumer reporting agency from informing a third party that a particular consumer report has been placed under a security freeze.

The bill requires a consumer reporting agency to place a security freeze on a consumer's report no later than five business days after receiving the written request and requires the consumer reporting agency to send a written confirmation of the security freeze to the consumer within five business days of instituting the security freeze. A consumer reporting agency must remove the security freeze within three days of notification from the consumer. The bill requires the consumer reporting agency to provide the consumer with a personal identification number or password to be used by the consumer in the case where a consumer may wish to provide for the limited release of his or her credit report for a designated period of time during the security freeze.

If the consumer wishes to allow his or her report to be accessed for a designated period of time while a security freeze is in effect, he or she must contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide: proper identification as determined by the consumer reporting agency; the personal identification number or password previously provided to the consumer by the consumer reporting agency; and the proper information regarding the specified period of time for which the report shall be made temporarily available.

The bill requires a consumer reporting agency to lift the security freeze within three days of receiving a request from a consumer to temporarily lift the security freeze and allows a consumer reporting agency to use telephonic communication or any form of secure electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report.

The bill allows a consumer reporting agency to temporarily lift or remove a security freeze only upon the consumer's request or if the consumer report was frozen due to a material misrepresentation of the fact by the consumer. In either instance the consumer reporting agency must notify the consumer in writing before removing the security freeze.

The bill allows a third party requesting access to a consumer report to treat the application as incomplete if the consumer has not authorized a temporary lifting of the security freeze for the period of time in which the request is made.

## **Exemptions**

The bill provides the following exemptions for use of a credit report by certain entities regardless of a security freeze being placed on a consumer's report:

- Any person to whom the consumer owes a financial obligation under certain circumstances;
- A subsidiary, affiliate, agent, assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;
- Any state agency acting within its lawful investigative or regulatory authority;
- A state or local law enforcement agency acting to investigate a crime or conducting a criminal background check;
- Any person administering a credit file monitoring subscription service to which the consumer has subscribed;
- Any person for the purpose of providing a consumer with a copy of the consumer's report upon the consumer's request;
- Pursuant to a court order lawfully entered; or
- The use of credit information for the purposes of prescreening as provided for by the FCRA.

In addition, check services companies and demand deposit account information services companies are not required to place a freeze on a consumer's report. Resellers of consumer information are also exempt, however they must honor a security freeze placed on a consumer report. Fraud prevention services companies issuing reports to prevent or investigate fraud are also exempt.

## **Fees**

The bill allows a consumer reporting agency to charge a fee, not to exceed \$10, when a consumer elects to temporarily lift or remove a security freeze on his or her consumer report. The bill disallows a consumer reporting agency to charge a fee to a consumer wishing to place a security freeze on his or her consumer report. A consumer may be charged a fee, not to exceed \$10, if the consumer forgets or misplaces the identification number or password provided by the consumer reporting agency and the agency must reissue the information to the consumer.

## **Consumer Information**

The bill does not allow a consumer reporting agency to change a consumer's official information in a consumer report when a security freeze is in effect without sending a written confirmation of the change to the consumer within 30 days of making the change. "Official information" includes the consumer's name, address, date of birth, and social security number. In the case of an address change, the bill requires the written confirmation to be sent to the new address and the former address of the consumer.

The bill provides that a written confirmation is not required for technical modifications to a consumer's official information including name and street abbreviations, complete spellings, or transposition of numbers or letters.

## **Cause of Action**

The bill creates a new cause of action for any person who is aggrieved by a knowing or willful violation of the provisions of the bill for the recovery of actual and consequential damages, court costs, and attorney's fees.

## **Disclosure**

The bill requires a consumer reporting agency to include a written summary of all rights under the bill to a consumer when sending the consumer a written disclosure. The bill details the information that must be included in the written summary of consumer rights, including the right to civil action. Consumer reporting agencies which maintain consumer reports on a nationwide basis must provide a toll free telephone number for the consumer to use if he or she wishes to communicate with the consumer reporting agency.

### **C. SECTION DIRECTORY:**

Section 1. Creates s. 501.005, F.S., authorizing and providing the procedures for a consumer to place a security freeze on his or her consumer report. Provides definitions pertaining to a consumer report security freeze. Provides procedures for temporary suspension and removal of a security freeze on a consumer report. Provides procedures to allow temporary access to a consumer report under a security freeze. Authorizes consumer reporting agencies to charge a fee to temporarily lift or remove a security freeze and disallows such fees for placing a security freeze on a consumer's report. Provides exemptions for certain entities. Provides civil remedy. Provides requirements for written disclosure.

Section 2. Provides that the act will take effect on July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill allows consumer reporting agencies to charge a reasonable fee any time a consumer chooses to temporarily lift or remove a freeze from his or her consumer report.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the

expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On October 18, 2005, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment does the following:

- Decreases the time in which a consumer reporting agency must send a written confirmation of the security freeze to a consumer from 10 days to 5 days.
- Provides that a consumer credit reporting agency must strive to process within 15 minutes a request from a consumer to temporarily lift his or her security freeze.
- Clarifies the entities that are exempt from a security freeze and may access a credit report to include state agencies, local or state law enforcement and other appropriate persons.
- Provides that a consumer credit reporting agency may not charge a consumer to place a security freeze on his or her credit report, but may impose a fee, of not more than \$5, for the consumer to temporarily lift or remove a security freeze from his or her credit report.
- Provides that a consumer credit reporting agency may charge a fee, not more than \$5, if a consumer fails to retain the original personal identification number or password provided by the consumer credit reporting agency and the agency must reissue the information to the consumer.
- Clarifies that a civil action may be brought for the knowing or willful violation of the bill's provisions.
- Provides that a consumer wishing to place a security freeze on his or her credit report must do so in writing by certified mail to a consumer credit reporting agency.
- Clarifies that the temporary lifting of a security freeze is for a specific period of time, not for a specific recipient.

On January 11, 2006, the Agriculture Committee adopted a strike-all amendment to the bill. The amendment:

- Provides definitions for the term "consumer report security freeze" or "security freeze".
- Changes the terms "consumer credit reporting agencies" to "consumer reporting agencies" and "credit reports" to "consumer reports" for uniformity with the federal Fair Credit Reporting Act.
- Allows for a reasonable fee, not to exceed \$10, to place, temporarily lift or permanently remove a freeze, or to receive a new PIN.
- Provides that documented victims of identity theft may place a freeze at no charge.
- Adopts the civil liability language of the Fair Credit Reporting Act.
- Includes penalties for both willful and negligent violations of the security freeze. The liability includes those entities who fail to comply, willfully or negligently, with the freeze, as well as those individuals who knowingly obtain a consumer report under false pretenses or knowingly without a permissible purpose.
- Allows for attorney's fees for actions filed in bad faith or for the purposes of harassment.
- Eliminates the 15 minute "goal" for removing the freeze.
- Requires the portion of the "written summary of rights" relating to items that could be impacted by the credit freeze, to be in at least 14 point, boldface, capital letters.